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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,817	01/27/2004	Bindu Rama Rao	14907US02	2488
23446	7590	10/19/2004	EXAMINER	
MCANDREWS HELD & MALLOY, LTD			CONNOLLY, MARK A	
500 WEST MADISON STREET			ART UNIT	PAPER NUMBER
SUITE 3400			2115	
CHICAGO, IL 60661			DATE MAILED: 10/19/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/765,817	RAO, BINDU RAMA
	<b>Examiner</b>	<b>Art Unit</b>
	Mark Connolly	2115

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 January 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 34-40 is/are allowed.
- 6) Claim(s) 1-5,8-14,16-22,24-31 and 33 is/are rejected.
- 7) Claim(s) 6,7,15,23 and 32 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 27 January 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____.  | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

1. Claims 1-40 have been presented for examination.

### *Drawings*

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, “the execution of the update application loader during at least one of startup and reboot” as claimed in claims 4, 21, 34 and 39 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

*Claim Rejections - 35 USC § 103*

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3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 5, 8-14, 17-20, 22 and 25-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Cheng et al [Cheng] US Pub No 2002/0166001 in view of Meyerson US Pub No 2002/0184619.

5. Referring to claim 1, Cheng teaches the invention including:

- a. displaying a list of available updates to an end-user [fig. 4].
- b. prompting the end-user to select an update [¶0055].
- c. invoking the selected update based upon information corresponding to a particular update [fig. 5 and ¶0056].
- d. performing the particular update [¶0058-0059].

Although Cheng teaches a means for updating a system, Cheng is silent in regards to displaying and selecting at least one update agent for performing the particular updates. Rather Cheng teaches only a single update agent for performing each and every update. Meyerson explicitly teaches that each software publisher can design their own update agent “to handle all of that publisher’s software” [¶0028]. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Cheng system to comprise an individual update agent for each of the different software publishers who have programs resident on the system (i.e. Diamond Multimedia, Intuit, Microsoft, etc... *See Cheng fig. 4*) because it would ensure an accurate updating means by providing each individual software publisher direct control on the

process and procedure with how a particular software application(s) must be updated on a users system rather than having to rely on a third party to manage and implement those different processes and procedures for an almost limitless number of software publishers and their software applications. It is obvious that in the Cheng-Meyerson system that the user would be presented with the available update agents from which to choose in order to perform a particular update since those update agents are responsible for updating the software in the Cheng-Meyerson system.

6. Referring to claims 2 and 3, Meyerson explicitly teaches that after installing updates, it is sometimes necessary to reboot the system [¶0046]. Because the Meyerson system only reboots when *necessary*, it is interpreted that the system would resume operation if a reboot were not necessary.

7. Referring to claim 5, Cheng displays a list of available updates [figs. 4 and 5]. It is obvious in the Cheng-Meyerson system that selecting the particular update agent corresponding to a particular update would apply the particular update.

8. Referring to claims 8 and 11-14, Cheng teaches maintaining tables, which are used to update the system. These tables comprise everything from product descriptions and release information to information necessary for scanning the system and identifying the products and also information necessary to perform the actual updates [¶0069-0077]. Cheng is not explicit about maintaining a table of update agents primarily because Cheng relied only upon a single update agent. Because the Cheng-Meyerson system relies on multiple update agents, it would have been obvious that the tables would have comprised information on the update agents, more particularly, where to locate the update agents and the relationships between the individual

update agents and the updates themselves because the tables comprise all the necessary information required to perform the updates.

9. Referring to claim 9, Cheng teaches that permission is required before updating [¶0118]. Obviously, if permission is not granted then non-volatile memory (i.e. the hard disk) cannot be updated with the new update.

10. Referring to claim 10, Cheng teaches that multiple updates can be applied at once [¶0054-0055].

11. Referring to claims 17-20, 22 and 24-31, these are rejected on the same basis as set forth hereinabove. Cheng and Meyerson teach the method and therefore teach the device performing the method.

12. Claims 4 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng and Meyerson as applied to claim1-3, 5, 8-14, 17-20, 22 and 25-31 above, and further in view of MacInnis US Pat No 6487723.

13. Referring to claim 4, although Cheng and Meyerson teach checking for available updates in a system, it is not taught that the detecting the need to update is performed during one of a power-up and reboot. MacInnis explicitly teaches that a system can detect updates during a power-up [col. 7 lines 25-28]. It would have been obvious for the Cheng-Meyerson system to detect updates during a power-up because Meyerson explicitly teaches that the update process can be initiated “in response to particular events” [¶0049] and during power-up presents an appropriate time period to detect updates for software such as operating systems as taught by MacInnis. A power-up is interpreted as an event.

14. Referring to claim 21, this is rejected on the same basis as set forth hereinabove. Cheng, Meyerson and MacInnis teach the method and therefore teach the device performing the method.

15. Claims 16 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng and Meyerson as applied to claims 1-3, 5, 8-14, 17-20, 22 and 25-31 above, and further in view of Ren US Pat No 6760908.

16. Referring to claim 16, although the Cheng-Meyerson system teaches updating a computer system, it is not explicitly taught that the computer system could comprise a personal digital assistant (PDA). Ren teaches that PDA's also require software updates [col. 1 lines 31-36 and col. 2 lines 17-40]. It would have been obvious to expand the Cheng-Meyerson system to enable its use in PDA's because PDA's require a means to update their software and the Cheng-Meyerson system provides a means to easily update all of a PDA's software.

17. Referring to claim 33, Cheng and Meyerson teach the method and therefore teach the device performing the method.

***Allowable Subject Matter***

18. Claims 34-40 are allowed.

19. Claims 6-7, 15, 23 and 32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

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20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Connolly whose telephone number is (703) 305-7849. The examiner can normally be reached on M-F 8AM-5PM (except every first Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas C Lee can be reached on (703) 305-9717. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

***PHONE NUMBERS WILL CHANGE COME OCTOBER 13th.***

***Mark Connolly (571) 272-3666***

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Mark Connolly  
Examiner  
Art Unit 2115

mc

October 4, 2004

  
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SUPERVISORY PATENT EXAMINER  
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